

Arizona Commission of Indian Affairs

Functional Procedures

The information provided in the ACIA Functional Procedures document is intended to provide the commission with an overview of open meeting law, statutory requirements, and describe the responsibility of its members as a public body.

OPEN MEETING LAW

A meeting is defined as “the gathering,” in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.” A.R.S. 38-431 (4). This is important to note, discussion with the majority, whether individually or as a whole, be email, social media on any matter involving legal action is “splintering the quorum,” error on the side of caution and hold discussion until the public body is assembled.

1. Public notice of a meeting of the Commission is required (within 24 hours of the meeting).
2. Items for discussion and/or action must be on the agenda and fairly described.
3. Each meeting shall be open to the public which includes physical access to enter the meeting room and open participation by members of the public to attend by phone. If the audio quality is perceived by the phone participants to be poor, this could be a violation.
4. Written minutes or audio recording(s) must be made available within three business days of the conclusion of a meeting.
5. Anyone may record meetings as long as it is not disruptive.
6. Each member should review Open Meeting Laws in the Arizona Agency Handbook found at http://www.azag.gov/Agency_Handbook/Agency_Handbook.html
7. 50% plus 1 of current appointed membership is required to establish quorum. 11 appointments on the Commission, 6 members must be in attendance at all times. Members who have termed out, but continue to serve until a successor is named, may count toward quorum.
8. Members who miss three consecutive meetings will be considered resigned
9. Appointed members must attend meetings in person. Ex-Officio’s may send a delegate on their behalf.
10. Executive Sessions may be called for limited purposes defined by statute (i.e., to review legal advice, personnel issues, sensitive data). A special meeting public meeting notice must be sent. Also, minutes from the Executive Session should be sealed and housed separate from the public meeting record. No voting may take place during an executive session. Appointed members are the only authorized participants of an executive session.
11. Reports by the executive director; anything may be reported and reporting items are not required to be listed on the agenda.
12. Calls to public; members are not permitted to respond to criticism.
13. Allows the Attorney General to conduct open investigations into possible violations of the open meeting law.
14. Make suggestions for future items during a public meeting.

COMMON PITFALLS FOR OPEN MEETING LAW VIOLATIONS:

1. Making comments immediately following a meeting, in casual discussions outside the meeting room or in public and/or common areas, by electronic mail, or social media that relate to commission activities.

2. Do not act as a sergeant at arms to remove members of the public who may be disrupting a public meeting. Contact local law enforcement.
3. Lining up votes in advance of a meeting.
4. Contacting appointed members individually to discuss a possible issue before the Commission.
5. "Hub and Spoke" or using a central person to collect feedback on a potential agenda item.
6. Answering "reply to all" on email responses and social media (text messages, Facebook, blogs).
7. Discussion of anything that is not on the agenda.
8. Overreaction to public criticism.
9. Proceeding without a quorum. Avoid chatting after a meeting.
10. Starting early or "hanging out" after meetings.
11. Calling an executive session for unqualified matters.
12. Disclosing contents of an executive session.
13. Failure to post advance meeting notice. (twenty-four hours minimum)
14. Failure to post signs on meeting location if changed at the last minute is a barrier to entry.
15. Any perceived violations of open meeting law should be placed on the next agenda to repeat the discussion in a public setting.

PENALTIES FOR VIOLATION:

1. Any violation voids all business action items (items which are not on the agenda are void).
2. Civil sanction per individual per violation. Individual members are responsible for this expense. ADOA risk management would consider this a punitive fine.
3. Appointed members may be removed from office.
4. Sanctioned individual(s) may also be held liable for Attorney and other related Legal fees.

CONFLICT OF INTEREST

Where there is a conflict of interest, this should be mentioned at a public meeting and confirmed in writing to the Director of the Commission of Indian Affairs. An explanation of the conflict is requested and kept on file. The member should leave the room and is prohibited from engaging in discussion which includes stating an individual position and offering details regarding the subject matter of the conflict. As such, a recusal will impact quorum. Conflicts of interest may also include participation on municipal boards and/or commissions.

Members of the Arizona Commission of Indian Affairs are referred to the "State Conflict of Interest Law" Arizona Revised Statutes Title 38, Article 8, A.R.S. Section 38-501 through 38-511. Commissioners may call the Attorney General's Office with any concerns they may have regarding possible conflict of interest. Currently, Charles Grube is the attorney assigned to the Arizona Commission of Indian Affairs. Mr. Grube may be reached at 602-542-8341 or email charles.grube@azag.gov

POWERS AUTHORIZED BY STATUTE

A.R.S. 41-541: Commission of Indian Affairs; members; term; compensation; officers; meetings; duties

- Only the (11) appointed members may vote
- 6 of 11 appointed members must be present to establish quorum and must be maintained throughout the meeting. Any member leaving the room or dropping off the conference call results in a break in quorum and the meeting must not proceed until quorum is reestablished.
- All members serve at the pleasure of the Governor. The Governor can appoint or remove appointed members at any time, as compared to other commissions, doing so does not include involvement by the legislature

*Appointed members do not represent tribal leadership, even if they are member of tribal council or other tribal official.

A.R.S. 41-542: Powers and duties; information; report; director; appointment; personnel; limitation; fees; directory

As indicated by title, 41-542: where a majority of the powers and duties of the commission exist. It is important to note the words 'shall' and 'may'. *Shall* denotes something that must be done, it is a directive and mandatory to complete. *May* means that a commission or member has the power to do so but it is within their discretion to take action. This particular section begins '*the commission shall assist and support state and federal agencies in assisting Indians and tribal councils in this state to develop mutual goals, to design projects for achieving goals and implementing their plans*' which should be considered the motto of the commission. The commission shall also '*Assemble and make available facts needed by tribal, state and federal agencies to work together effectively*'.

In reading 41-542 (A) it is best to consider the first section as a primary interest, all items listed in this section are significant in that *shall* is an imperative. As a state commission serving a state government created by a state legislature the primary objective is to fulfill the statute. As appointed members of the commission, members have no duties as tribal members. However, this statute allows the commission to confer and coordinate to address tribal concerns. It also allows members to act independent of what the legislature may want to do. The statute indicates a requirement to confer and coordinate but that does not mean the commission acts on the wishes of the legislature. The commission does have the authority to use their discretion on how to proceed on a particular issue. However, if that issue is political in nature and a tribal council is not satisfied with a particular outcome the members are exposing themselves to the possibility of being removed from the Commission. The Arizona Court of Appeals has made clear that if there is "some evidence" that a state appointee has engaged in unethical behavior, the Governor may have cause to remove the appointee. *Johnson v. Mofford*, 193 Ariz. 540, 544, 975 P.2d 130, 134 (App. 1998). Rather than take on a strong advocacy role, it is advisable to focusing on collecting and disseminating information.

The most powerful of all duties listed in A.R.S 41-542 is '*assemble and make available facts needed by tribal, state and federal agencies to work together effectively*'. Under this, the commission may work with various agencies to encourage clearinghouses of information. The commission has the expressed power to make *recommendations to the governor and the legislature* (usually leadership). These recommendations would require a formal vote. In combination with assembling facts, the commission could make formal recommendations for legislation (including citizen initiatives).

The commission has the power to: *Confer and coordinate* with officials and agencies of other governmental units; and have an ability to '*Work for greater understanding and improved relationships between Indians and non-Indians by creating an awareness of the legal, social and economic needs of Indians in this state*' this is particularly significant as no other single body has authority to do this. The commission is in a position to create a bridge for communication.

On request, '*State and local public officers shall furnish the commission with information that it may require for its purposes.*' This is imperative, as the commission has the ability to obtain information to help bridge gaps in the fact finding process. '*The commission shall make a written annual report to the governor and the legislature and ay submit such recommendations to the legislature in the form of proposed legislation.*'

A.R.S. 41-543: Indian affairs commission publications fund

The commission may create, produce and distribute publications for a fee. Without this particular section, the commission would not be able charge a fee.

A.R.S. 41-544: Indian nations and tribes legislative day

In cooperation with representatives from the State's Indian Nations, shall annually facilitate an Indian Nations and Tribes Legislative Day on Tuesday of the second week of each regular legislative session. This is not a legal holiday

A.R.S. 41-545: Indian town hall fund

This statute creates a public fund to allow the commission to charge a fee to defray the costs associated with the town hall.

A.R.S. 15-244 (C): Arizona Department of Education, Office of Indian Education

At least once each year, representatives from all Indian Nations, members of the state board, the governor's office, the Arizona Commission of Indian Affairs, the Inter Tribal Council of Arizona, the legislature, the superintendent of public instruction and the Indian Education Advisory Council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of Native American Pupils.

A.R.S. 41-844 (D): Duty to report discoveries; disposition of discoveries; definitions

The Director of the Arizona State Museum must notify the commission when American Indian human remains, funerary objects, sacred ceremonial objects or objects of cultural patrimony are discovered during excavation or construction.

COMMISSION DUTY UNDER EXECUTIVE ORDER 2006-14

The Governor has the power to issue orders to executive branch agencies and is considered state policy for state employees. In the instance of non-compliance, only the Governor of Arizona can enforce an executive order. The governor has limited authority over elected offices like the Attorney General or Superintendent of Education. This is an obligation to create tribal consultation policy at all executive branch agencies, report annual activities to the governor and provide a copy to the Commission of Indian Affairs for distribution to the tribes.

UNAUTHORIZED POWERS

- The commission does not have the authority to sue or go to court or otherwise participate in litigation. This is significant as many tribal issues end up going to court.
- The commission cannot conduct hearings
- The commission may not delegate responsibility to any member and must draft any form of recommendations during an open meeting. For example, the legislature may request a training curriculum for new members. The Commission may create the training program but must do it during an open meeting or a better situation would be to coordinate this activity with a state agency already performing this service. The Commission may only act as "the commission" during open a meeting and no individual member has the authority to act as the commission.

ANNUAL WORK PLAN

The commission will defer to statute requirements.

STRUCTURE OF THE COMMISSION

The ACIA shall consist of the following ex-officio members (or their designee), who serve by virtue of their office:

- Governor
- Attorney General
- Superintendent of Public Instruction
- Director, Department of Health Services
- Director, Department of Transportation
- Director, Department of Economic Security
- Director, Arizona Commerce Authority
- Director, Department of Tourism
- Director, Department of Gaming

Ex-Officio members of the board serve at the pleasure of the Governor. The duty of the ex-officio is to support the Commission; and to provide assistance within their agencies area of expertise. Ex-Officio members may not vote.

The Governor shall appoint eleven members to serve on the board of commissioners:

- (4) At-Large members, one of whom must represent a non-profit
- (7) Indian Members; each member shall be a member of an Arizona Indian Tribe. Each tribe or tribal council may submit names of members of its tribe to be considered for appointment; and a member may be removed at the request of a tribe or tribal council if the member was previously nominated by that tribe or tribal council.

The term of office for commission members appointed by the governor shall be three years. The term of office shall expire on the first Monday of January. Members who fail to attend three consecutive Commission meetings without sufficient cause shall be considered to have resigned. Each expired term member shall hold office until a successor is appointed and qualifies. Appointments to fill a commission vacancy during the normal term of office shall be for the unexpired portion of the term. The duty of the commission member is to support the commission.

Members of the Commission serving by virtue of their office (ex-officio) shall serve without compensation. Appointed members may receive compensation as determined by A.R.S. Section 38-611 for each day of attendance at meetings. Due to a limited operations budget, compensation is not available.

Elected Officers

The Commission shall hold elections for Chairperson and Vice Chairperson during the first meeting of July. Each Officer shall be an appointed member.

Duties of the CHAIRPERSON:

- Conduct and preside over commission meetings
- Develop meeting agendas in collaboration with the ACIA Executive Director.
- Act as the spokesperson for the commission in collaboration with the ACIA Executive Director

Duties of the VICE CHAIRPERSON:

- Conduct and preside over commission meetings in the absence of the chairperson

- Review minutes of the previous meeting before distribution to the body of the commission. Once approved, the vice chairperson will forward copies to the chairperson and ACIA Executive Director for dissemination
- Assumes the role of the chairperson, if the chairperson resigns or otherwise vacates the position

Commission Staff Selection Process

The Governor shall appoint an Executive Director of the Commission pursuant to A.R.S. Section 38-211; the executive director may not be a member of the Commission. The director is eligible to receive compensation pursuant to AR.S. Section 38-611. The commission may employ clerical, professional and technical personnel subject to appropriated funds and shall prescribe their duties and determine their compensation.

Meetings

- The Commission will meet not less than once per quarter on the second Thursday of the first month of each calendar quarter.
- Meetings will be publicly posted 24 hours in advance, in accordance with the Open Meeting Law.
- Additional meetings may be scheduled by the Chairperson. A minimum of 48 hours advance notice must be provided to board members.
- All meetings will be open to the public, with the exception of executive sessions, in accordance with the Open Meeting Law, A.R.S. Section 38-431 to 38-431.09.
- A meeting is a gathering in person or through technological devices of a quorum of a public body at which they discuss, propose or take legal action, including deliberations A.R.S. Section 38-431(4). This includes telephone and email communication.

Rules of Conduct

- Roll call shall be taken by the Chairperson or Vice-Chairperson and a quorum (or lack of quorum) established
- Minutes shall be taken for each public meeting. The original copy of the minutes and any supporting documentation including handouts shall be filed with the Arizona Commission of Indian Affairs and shall be available for public inspection.
- The Chairperson shall conduct and preside over Commission meetings
- Amendments to the meeting agenda shall be submitted to the Chairperson and ACIA Executive Director no less than 72 hours in advance of Commission meeting. Revised agendas will be distributed no less than 24 hours in advance of a Commission meeting
- A verbatim explanation on any board member's vote on a roll call may be included in the minutes. The member shall submit the remarks in writing to the Commission Secretary within 24 hours after the vote
- All Commission members, Ex-officio's, staff and members of the public in attendance shall observe Robert's Rules of Order as a guide, and extend courtesy and respect to each other

Agendas

- Agendas for Commission meetings will be developed by the Chairperson and ACIA Executive Director
- Commission members may submit agenda items for consideration to the Chairperson and ACIA Executive Director
- No items may be discussed which are not included in the agenda. Any new areas of interest identified during the current meeting will be placed on the future agenda.
- Items may be dropped from the agenda during a meeting, but no new items may be added.
- The agenda for Commission meetings will be posted on the ACIA website at www.azcia.gov

Quorum

- A majority of the existing appointed members of the Commission shall constitute a quorum for the transaction of business. A quorum is defined as one-half plus one of appointed memberships. Participation by phone counts toward quorum.
- Meetings may be cancelled if a quorum is not established within 24 hours of scheduled time.

Attendance

- All Commission members have an obligation to attend each meeting
- All Commission members are expected to actively participate in activities of the Commission
- Sign-in sheets will be maintained for public record at each meeting. However, members of the public do not have to disclose their identity unless they choose to address the Commission
- Members who fail to attend three consecutive Commission meetings shall be considered to have resigned.
- Each member shall hold office until a successor is appointed and qualifies.

Voting

- Each appointed Commission Member who is present will have one vote
- All decisions will be made by a simple majority vote
- Absentee voting will not be allowed
- In the case of close votes, numerical breakdown of all votes will be reflected in the minutes (EX: 3 in favor, 4 against, 2 abstain)

QUESTIONS AND ANSWERS

‘Shall assist and support state and support federal agencies’ implies that the commission take direction from state and federal agencies meaning that the first obligation is to provide support as requested. In an instance of a state or federal agency is not working with tribes, does that mean we sit on our hands? Mr. Grube offered some tools that may be necessary to interpret statute:

1. Always use the plain dictionary meaning of words unless a specific definition is included in statute
2. Figure out what the legislature meant by focusing out the real words
 - a. Never interpret that the result is ridiculous.
 - b. Look at legislative history
3. How does it fit into all the statute? It should all fit together and work harmoniously rather than cancel each other out

Mr. Grube suggested that the commission avoid a split between proactive or reactive use and facilitate the mobilization of resources to resolve a particular situation. He offered the example of, a snowfall that trapped cattle in the wilderness and the circumstances required that hay had to be flown in. Within the statute, the commission has the power mobilize resources by informing the Governor, the Air National Guard, or contact tribes to offer assistance. However, the commission does not have the authority to charter a helicopter and deliver hay. The commission has a role to facilitate this process. Keep in mind that the composition of appointed members will influence the commission on how to proceed or avoid a particular activity. For example, the appointed members of an Indian tribe may not want the commission to engage in activities that interfere with practices that are normally addressed by tribal councils.

The authority provided by 41-542 is vague and allows for the use of discretion. In an instance, where an entity is seeking support, how do we gauge the cause to determine if relevant issue can be supported without seeking advice from our legal counsel? There is no requirement that supporting a particular cause must be approved by the Office of the Attorney General. As long as the request is in alignment with the statute of the commission, then the issue is open for further consideration. However, the commission may

not send out any information or declarations on behalf of the state of Arizona that one program or cause is superior over another. The commission may only speak on the behalf of the Commission.

How the commission should approach requests for an official AG opinion if one was needed? It would have to be included on the agenda, involve discussion and then a vote. Less formal requests may be transmitted or process through the executive director.